

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL NUNEZ,

Defendant.

**8:16CR27**

**MEMORANDUM AND ORDER**

This matter is before the court on defendant's motion to vacate pursuant to [28 U.S.C. § 2255](#). [Filing No. 52](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). "The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." *Id.*

The defendant plead guilty to a violation of [21 U.S.C. § 846](#), conspiracy to distribute 50 grams or more of a mixture of methamphetamine. Judgment in this case was entered on September 1, 2016. [Filing No. 39](#). The defendant then filed this § 2255 petition. [Filing No. 52](#).

Defendant contends that he has newly discovered evidence that the government failed to disclose to him which goes to the sufficient credibility about Amber Max, in

violation of the *Brady* and *Giglio* cases. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

On initial review, the court finds that “it does not plainly appear that the defendant is entitled to no relief,” and that the government should be required to answer. On receipt of the government’s answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant’s claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant’s Section 2255 motion within 21 days of the date of this Order.

Dated this 17th day of January, 2018.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge